IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3517 OF 1990

M/s.Surendra Eng.Corpn. Plaintiffs
versus
M/s.R.K.Diary & Poultry Farm Defendant

Mr.G.M.Shetty for plaintiffs.

Mr.D.B.Lodoge for defendant.

CORAM : A.M.KHANWILKAR, J.
DATE : 09th October 2007

PC :-

1. Defendants have been duly served. Defendants had appeared and contested the Summons for Judgement by filing reply affidavit. The Summons for Judgement was made absolute by directing the defendants to deposit the principal amount. The defendants have not deposited that amount so far. The defendants have also not filed any written statement as noted by the office. In the circumstances, the suit is proceeded against defendants as undefended suit.

2. In substance, the suit claim is on the assertion that the plaintiffs had sold, delivered and supplied goods to the defendants. The amount outstanding towards value of said goods,

according to the plaintiffs, is in aggregate of sum of Rs.1,10,056=50 Ps.. That claim is supported by documentary evidence. Significantly, the defendants while contesting the Summons for Judgement, have admitted their liability to pay the principal amount of Rs.1,10,056=50 Ps. on affidavit. However, sought indulgence to pay that amount in instalments. In that sense, the suit claim is admitted by the defendants on affidavit already filed before this Court. The only question that remains to be addressed is whether the plaintiffs are entitled to interest @ 18% p.a. as claimed by them on the principal amount. The plaintiffs, besides assertions made in the plaint, have filed affidavit of evidence in lieu of examination-in-chief sworn by Dakshak Ratilal Parikh, Authorised Officer of the plaintiffs dated 10th September 2007. The evidence of the plaintiffs witness reiterates the stand taken by the plaintiff. Besides, the plaintiffs have filed compilation of documents in support of their claim which includes copy of bills in question and the transport receipt indicating that goods were delivered and supplied to the defendants. The bills raised in relation to the goods supplied clearly provides that for the

delayed payment the defendants will be liable to pay interest @ 18% p.a.. The plaintiffs in the legal notice have also reiterated this position which remained unreplied. Moreover, the transaction between the parties was obviously a commercial transaction. Taking over all view of the matter, in exercise of powers under Order 9, Rule 10 of the CPC, I am inclined to accept the claim of the plaintiffs that the plaintiffs will be entitled for interest @ 18% p.a. along with the principal amount. In the circumstances, the suit is decreed in terms of prayer clause (a) of the plaint with costs. Prayer clause (a) reads thus:-

> "(a) that this Hon'ble Court be pleased to order and decree the defendants to pay to the Plaintiffs a sum of Rs.1,61,232.75 Ps. as per the particulars of claim (annexed hereto and marked as Exhibit "D") with further interest thereon at the rate of 18% per annum or such other rate as this Hon'ble Court shall determine on the said principal sum of Rs.1,10,056.50 Ps. from the date of filing of the suit till payment and realisation thereof;"

3. Decree be drawn up accordingly.

(A.M.KHANWILKAR, J.)